



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0131]

Entry-Level Driver Training: Application for Exemption; Ohio Department of Education

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT) .

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the Ohio Department of Education's (ODE) request for an exemption from the Entry-Level Driver Training (ELDT) requirements. The exemption request applies to drivers, trained through ODE's "Pre-Service School Bus Driver Training" curriculum, who are seeking to obtain their Class B Commercial Driver's License (CDL) with school bus (S), passenger (P), and air brake endorsements and to current Class B CDL holders wishing to add the P and S endorsements. The ODE believes the Ohio theory (i.e., classroom) curriculum and behind-the-wheel (BTW) instruction meet or exceeds all the standards of the 49 CFR 380 subpart F, ELDT requirements. FMCSA analyzed the exemption application and public comments and determined that the application provided no evidence that the exemption would ensure a level of safety equivalent to or greater than that achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division, Office of Carrier, Driver, and Vehicle Safety Standards, (202) 366-2722, MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2021-0131” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2021-0131” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (§ 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (§ 381.305). The decision of the Agency must be published in the *Federal Register* (§ 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory

provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (§ 381.300(b)).

III. Background

Current Regulation(s) Requirements

FMCSA's entry-level driver training (ELDT) regulations set forth minimum training standards for certain individuals applying for a Class A or Class B CDL for the first time; an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time (49 CFR part 380, subpart F). These individuals are subject to the ELDT requirements and must complete a prescribed program of instruction provided by an entity that is listed on FMCSA's Training Provider Registry (TPR). The training requirements do not mandate a minimum number of theory (i.e., classroom) or behind-the-wheel (BTW) hours for the completion of the Class A and B CDL or the S, P, or H endorsement curricula. FMCSA will submit driver-specific training certification information to State driver licensing agencies, which can administer CDL skills tests to applicants for the Class A and B CDL, and/or the P or S endorsements, or knowledge test for the H endorsement, only after verifying the driver completed the required training. The compliance date for the ELDT regulations is February 7, 2022.

Applicant's Request

The ODE requests an exemption from the ELDT requirements as set forth in 49 CFR part 380.¹ The exemption request applies to drivers, trained through ODE's "Pre-Service School Bus Driver Training" curriculum, who are seeking to obtain their Class B

¹ ODE did not specify which subparts within 49 CFR part 380 are included within the scope of its application for exemption. However, based on the application's reference to "the new Entry Level Driver Training regulations," FMCSA interprets that ODE is requesting exemption from 49 CFR part 380, subpart F, which includes the ELDT requirements for drivers as set forth in § 380.609.

CDL with S, P, and air brake endorsements and to current Class B CDL holders wishing to add the P and S endorsements. If granted ODE requests that the exemption remain in effect as long as the Ohio Pre-Service theory and BTW curricula meet or exceed all the Federal training standards. The ODE states that the Ohio Pre-Service School Bus Driver Training program was established in 1978, and periodic review and upgrades to the program are continuous. With more than 25,000 school buses operated in Ohio, safety is of greatest importance for the ODE's Office of Pupil Transportation, and thousands of drivers are trained through the Department's program each year, including new and "existing" drivers seeking their initial CDL and applicable P and S endorsements.

The ODE's application explains that all drivers who operate school buses in Ohio must be listed in the ODE's School Foundation Payment System (SFPS) portal which tracks driver license information and assures drivers complete the necessary training requirements to transport students in Ohio. The SFPS verifies that drivers participated in both theory and BTW instruction and completes daily checks of driver certificates to ensure certificates are not expired. All drivers are required to attend theory training and have skill evaluations at least every 6 years. Most drivers are evaluated annually by their supervisors and/or on-the-bus instructors.

The ODE contends that without this requested exemption, "Ohio school bus drivers would be required to have more training than anyone in the industry." School bus drivers who complete the Ohio Pre-Service School Bus Driver Training meet all the criteria to operate any Group-B commercial motor vehicle (CMV). This training program enables a driver to obtain a Class B CDL and provides the training to obtain either the P, S, or air brake endorsements, which allow for the driver to operate multiple Group B-regulated CMVs.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, the ODE believes the current State revised and administrative codes that requires new Ohio school bus drivers to successfully complete 15 hours of theory instruction and a minimum of 12 hours of BTW instruction and the training instructors' credentials, exceeds the requirements set forth in the ELDT regulations. The ODE's application also references the Ohio law requiring existing drivers to successfully complete 9 hours of theory instruction once every 6 years after initial certification, and requiring school bus drivers to complete a minimum of 4 hours of annual in-service training specific to the operation of a school bus, as additional elements that exceed the level of safety of the ELDT regulations.

V. Public Comments

On November 18, 2021, FMCSA published notice of this application and requested public comment (86 FR 64591). The Agency received 91 comments. Eighty-five commenters supported the exemption request broken down as follows: 59 individuals/drivers, 24 schools/school districts, the Pennsylvania Department of Transportation, and the ODE. Most of those expressing support for the application – primarily individuals/drivers or training schools in the State of Ohio – repeatedly commented that the ODE training regulations for school bus drivers in Ohio already exceed the requirements set forth in the impending Federal ELDT regulations.

The Commercial Vehicle Training Association (CVTA) and the National Association of Publicly Funded Truck Driving Schools (NAPFTDS), opposed the request. Also, Ancora Education and Roehl Transportation (Ancora/Roehl) expressed opposition to the request. In their jointly submitted comments, the CVTA and NAPFTDS stated: “The safety of children being transported to and from school is not negotiable and should not be part of any discussion that does not adhere to the highest level of commercial driver and passenger training standards. The ELDT rule was created for this very purpose. The ELDT rule seeks to improve the quality of CDL training and the safety of drivers nationwide by mandating uniform standards that apply to all new CDL applicants. The ODE must be held to the same standard as all other entities, especially those who transport children.”

Ancora/Roehl also opposed application in their jointly filed comments, stating: “The petitioners claim that Ohio Pre-Service theory and BTW meet or exceed all Federal standards and that they should be exempt from ELDT. We believe that in the interest of transparency, improving safety on our busy roads that they should be held to the same rules as everyone else. If the ODE does, in fact, ‘meet and exceed’ the ELDT requirements there is no reason as to why they cannot participate in the Training Provider

Registry (TPR) as any other training provider. If FMCSA, grants this exemption we fear that this will lead to more exemptions, further exposing our children to unsafe drivers and road conditions.” Four other commenters offered no position either for or against the ODE request, including the National School Transportation Association.

VI. FMCSA Safety Analysis and Decision

FMCSA evaluated the ODE application and the public comments and denies the exemption request. When the Agency originally established the ELDT rule, the Entry-Level Driver Training Advisory Committee agreed to the rule’s core provisions through the Negotiated Rulemaking process. Furthermore, the Moving Ahead for Progress in the 21st Century (MAP-21) legislative statute which mandated the establishment of this rule, did include the passenger (P) endorsement within the scope of required ELDT. In light of the fact that 49 CFR part 383 currently requires that anyone seeking to obtain an S endorsement must also obtain a P endorsement, including the S endorsement training requirements in the ELDT final rule is entirely consistent with MAP-21. FMCSA believes that the S curriculum in the final rule will improve safety by providing a more complete approach to training that involves the transportation of all CMV passengers, including school children.

FMCSA does not believe the ELDT rule unduly burdens those jurisdictions that already maintain reasonable S training requirements. States or localities currently requiring that school bus drivers obtain S training that meets or exceeds the minimum standard established by the ELDT rule will be minimally impacted because the rule does not impose additional training requirements on those programs. Any provider who currently offers S endorsement training that is equivalent to, or more stringent than, the curriculum set forth in the ELDT rule is eligible for listing on the TPR, presuming all instructor qualifications and other requirements are met. Entities eligible for listing on the TPR include, for example, individual school districts, State agencies or departments, and

third parties that contract with States or localities. The two commenters in opposition CVTA/NAPFTDS and Ancora/Roehl commented to these same points, and the Agency concurs with these commenters.

The ODE application does not provide an analysis of the safety impacts the requested exemption from the ELDT regulations may cause, and also does not provide adequate countermeasures to be undertaken to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. Furthermore, through the Negotiated Rulemaking process, and the normal Agency notice and comment process for finalizing the ELDT rule, these provisions were agreed upon by the participants.

For these reasons, FMCSA denies the request for exemption.

Robin Hutcheson,

Deputy Administrator.

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